



# Wholesale Alcohol Tax

## News and developments

*A publication of the Alcoholic Beverages Section*

**Rick Clayburgh**  
**Tax Commissioner**

### Signs

Our office has received some complaints from wholesalers regarding the furnishing of both indoor and outdoor signs by other wholesalers to retailers. This resulted in our office completing several field reviews and inquiries with wholesalers and retailers. In completing these reviews, we determined the indoor and outdoor signs being provided to retailers are not always in compliance with the provisions of the law pertaining to value limitations.

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### Outdoor Signs

Signs located on the exterior or outer side of a building are regarded as an “outdoor sign.”

As set out by the alcoholic beverages law, a wholesaler may provide an outdoor sign to retailers provided the

value of the sign does not exceed \$100. The wholesaler is not restricted on the number of outdoor signs being provided to the retailer, provided the value of each individual outdoor sign does not exceed \$100.

Generally, the value of the outdoor sign will be based upon the cost of the sign paid by the wholesaler. However, our recent review determined that some signs provided to retailers were originally purchased by the wholesaler at a reduced cost or at no cost from a supplier. Because the value of the outdoor sign is not allowed to exceed \$100, it will be necessary for a wholesaler to arrive at a fair market value when determining the value of a sign that has been purchased at a reduced cost or at no cost. Fair market value means the price the wholesaler could reasonably be expected to pay for this same sign on the open market between a willing buyer and seller.

### Indoor Signs

Indoor signs, which are defined as “point-of-sale items,” are located within the interior of a building.

North Dakota Century Code (N.D.C.C.) § 5-01-11 provides that a wholesaler may provide point-of-sale items, which include indoor signs, for each retail account, provided the value of the point-of-sale items does not exceed \$500 each calendar year for each of the wholesaler’s suppliers.


Like the outdoor signs, the value of the indoor sign will generally be based upon the cost of the sign paid by the wholesaler. If the indoor signs are purchased at a reduced cost or no cost, it will be necessary for the wholesaler to arrive at a fair market value when determining the value of the signs.



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## Enforcement

When reviewing the valuation issue of both outdoor and indoor signs, our office will first look to the wholesaler for a value determination of an outdoor or indoor sign, generally identified by the actual purchase price. In the event the sign is purchased by the wholesaler at a reduced cost or at no cost, the wholesaler will be expected to use their expertise in arriving at a fair market value attributable to each sign to ensure the wholesaler does not exceed the \$500 limitation amount for point-of-sale items.

If our office determines that a wholesaler is providing signs to retailers that do not meet the valuation criteria defined above, the wholesaler will be advised in writing to remove the sign in question or provide additional information to this office that supports the initial value attributed to the sign. 

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## Promotions

Advertisements or promotions paid for by a wholesaler may be general in nature and may advertise the wholesaler's beverages. However, such advertising cannot mention a specific retailer of alcoholic beverages, nor can there be cooperative advertising between the wholesaler and retailer.


Should a promotion or advertisement mention the name or location of any retailer of alcoholic beverages, the cost of the promotion or advertisement cannot be paid for or absorbed by the wholesaler of alcoholic beverages.

Recently, questions have been forwarded to our office regarding the use of the Internet or a wholesaler's web site for advertising or promotional purposes. Regardless of the method of communications a wholesaler of alcoholic beverages may use to provide promotions or advertisement, the wholesaler is still prohibited from mentioning a specific retailer of alcoholic beverages. 

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## Brand Registrations

Alcoholic beverage imported into this state or made available for sale in this state must first have the brand label registered with the Office of State Tax Commissioner. A listing of currently approved brand registrations is available on our web site at [www.ndtaxdepartment.com](http://www.ndtaxdepartment.com) by clicking on "Alcohol," and then clicking on "Publication."

Because brand registration renewals are required on or before June 30 of each year, you should check the listing annually to ensure that beverages you import or sell in this state are currently registered. 

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## Electronic Filing


We are currently developing a program that would provide you the convenience of electronic filing. As we move forward with this program, we anticipate inviting representatives from the alcoholic beverages industry to preview the proposed system and to receive comments. The anticipated outcome is to provide a secure electronic filing system that will allow you an opportunity to file tax returns at any time - 7 days a week, 24 hours a day. 

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## Wholesaler's Price List

Wholesalers cannot discriminate among the licensed retailers in its sales territory by way of the price of beer sold to the retailers or in price promotions.


Wholesalers are reminded to file the price list (promotion list) they provide for retailers each month with the Tax Department's Alcoholic Beverages Section.

The price list (promotion list) should identify the wholesaler by name and address, and contain, with respect to each item, the brand or trade name, size of containers, nature of contents, number of containers in a case, price of a container, and all discounts and net price of the item to the retailers. 

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## Tap Cleaning


During the Fall 2003 meeting of the North Dakota Beer Wholesalers, our office provided information that we hoped would clarify "tap cleaning" services. It appears that for many years, wholesalers have had different understandings regarding the provision of the law which provides a \$50 limitation on beer containers and equipment used for dispensing tap beer. These differences have apparently evolved from the lack of instruction that specifically includes "tap cleaning" as part of this limitation.

Because of the concerns and issues expressed by wholesalers during and following the September meeting, we have continued to study the issue of tap cleaning. We do not have additional instruction on this issue at this time, but will continue to work with the industry to understand this issue and look for consensus from wholesalers on their understanding of an acceptable solution to this issue. Toward that end, we ask that you please respond to the Tap Cleaning Survey included with this newsletter. 

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## Taxpayer Assistance

If you have questions regarding alcohol issues or correspondence received from our office, the following information will be helpful in ensuring that your call or visit to our office is completed in a speedy and efficient manner:

- If you have general alcohol tax questions, please call our Alcoholic Beverages Section at (701)328-3139.
- If calling our office with regard to correspondence you have received, please call the number that is listed on the correspondence, and have a copy of the correspondence available when you call.
- When calling our office, please note the name of the person assisting with your question in the event you have any follow-up questions later.
- Instead of calling or visiting our office, you may also e-mail us at [alcoholtax@state.nd.us](mailto:alcoholtax@state.nd.us). 

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